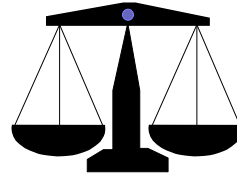


"LEGAL PEACE"

RESIDENT COURSE NEWLETTER



DEFENSE INSTITUTE OF INTERNATIONAL LEGAL STUDIES

No. 1

Newport, Rhode Island

September 2002

Welcome to the first Defense Institute of International Legal Studies (DIILS) resident course newsletter for former participants and friends of DIILS resident peace operations courses. Since our start in October 1997 we have offered 12 courses on the legal aspects of peace operations to over 300 participants from 65 countries. Much has changed during this time:

- Management of the courses has been shifted from Naval Justice School to DIILS
- Over 80% of the curriculum has been rewritten at least once to stay up with current trends.
- In partnership with the U.S. Institute of Peace a "mini course" on Negotiation and Mediation has been incorporated into the 5 and 1/2 week course.
- The 5 1/2 week Peacekeeping iaw the Rule of Law (PKRL) course now features two multi day "peace operations" exercises designed to give potential contingent commanders the skills they need to participate in a multinational coalition.
- A new 2 week course "Peacekeeping for Decision Makers" was added in 2001.

Legal Developments

By Guy Abbate, Jr.

As attendees of all of our resident courses are well aware, the United Nations Charter makes no mention, by name, to peace operations or peacekeeping, and yet the Security Council has for over 50 years been able to fashion mandates to accomplish peace operations missions from Chapter VI and Chapter VII of the Charter. We have often discussed the differences between the two chapters in class as well as the concept of a so-called "Chapter VI and 1/2" operation.

Recently during a class visit to the United Nations the students received a briefing from one of the staff members of the UN Legal Advisor. Interestingly, the attorney made the point that the age old distinctions between Chapter VI and Chapter VII for peace operations had little meaning in today's world as the Security Council debates and passes mandates for present day peace operations missions. To put it mildly, the attorney certainly had the attention of the class and the faculty with that statement.

It was the attorney's contention that the Security Council has created a "bridge" between Chapters VI and VII that makes the

distinction between them academic at this point in time. Explaining further, she noted that whether a mandate today is a "Chapter VI" or "Chapter VII" mandate, the tasks enumerated in most mandates make the mandate both a Chapter VI and VII mandate at the same time.

Furthermore, international customary law seems to be working to also break down this classic distinction. Is a soldier on peace operations authorized to intervene in citizen on citizen violence or crimes that are committed in the presence of the peace operator? The classic answer to that question is "it depends." It depends on the mandate, the rules of engagement, the law of the location, and, conceivably, the law of the soldier's country. But many legal scholars would argue that the very nature of peace operations requires the soldier to intervene in such situations and to, in essence, take on a local policing mission, regardless of the mandate or any of the other considerations enumerated above.

The consequences of this interpretation of an armed peace operator's obligations in the conflict area could be enormous, both in terms of the risk inherent in the duties of a peace operator and, consequently, the training that will be required to participate in a mission as well as the initial national decision to commit to participation. If, for

example, a country's national peace operations policy only allows participation in Chapter VI operations, what of this blurred

distinction between Chapter VI and VII and what impact will a humanitarian code of conduct that requires armed intervention in local violence to save lives have on that decision process? Will countries be willing to participate in operations under these conditions and what legal and political ramifications lie ahead for the participants and their sovereigns who fail to take on these tasks, but wear a blue helmet and receive personal and national compensation for participation?

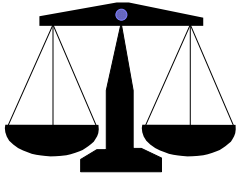
The notion and dynamic of an evolving international law process is one that every graduate of our peacekeeping courses should be both aware of and understanding of. Forces sent to a peace operation should be thoroughly trained in Rules of Engagement that are consistent with the mandate and that mirror international law. What the mandates and the law actually require at this point in time is the real issue.

[I would be pleased to correspond by email with any graduate concerning this issue and can be reached at guyabba678@aol.com.]

UN UPDATE

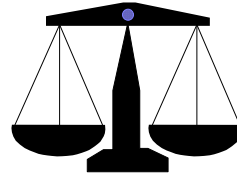
By Karl Farris.

Publication of the UN's "Report of the Panel on United Nations Peace Operations" (Brahimi Report) in August, 2000, launched another round of peacekeeping reforms at UN headquarters. In support of that process the Department of Peacekeeping Operations (DPKO) has recently prepared and published several "doctrinal guidance documents" for its



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use and use by Member States such as the UN's Mission Planning Process, Standardized Rules of Engagement and Command and Control. These are available for Member States. Make sure that your country's Mission at UN headquarters maintains regular contact with DPKO and provides you with all relevant Peacekeeping Operations publications and materials as they become available.

is not enough for them to simply reach a negotiated settlement. The parties must be provided help in implementing the terms of the settlement. This help must be in the form of credible third party guarantees, especially in the areas of security and power sharing during the treacherous and insecure period of demobilization and disarmament.

BOOK REVIEW

The message for policy makers is that settling civil wars cannot be left to the combatants themselves. A trustworthy, deeply committed third party is needed.

Committing to Peace: The Successful Settlement of Civil Wars by Barbara F. Walter. Princeton University Press, 2002.

BOOK REVIEW by Karl Farris

In this short manuscript of 150 pages the author examines peace settlements of civil wars over the last 50 years in an attempt to answer the question of why some civil wars are settled peacefully and others violently.

The author's key finding is that even if the warring parties have grown tired of fighting and agree to terms of peace, it

WE WANT TO HEAR FROM YOU

In order to improve our courses we want to get feedback from you our former participants on how your participation in our courses has assisted you. Please send us an email (Aseltinewc@jag.navy.mil) telling us your current position and how you are using what you learned in Newport. We also welcome your suggestions on what should be added to the course in order to help you do your job.

Bill Aseltine, Resident Course Coordinator
Defense Institute of International Legal
Studies (DIILS)
360 Elliot Street Newport, RI 02840
Aseltinewc@jag.navy.mil
(401) 841-1524 ext 199 (DSN 948)
FAX (401) 841 2828